

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEMETRIUS McBRIDE,

Petitioner,

Civil Action No.
06-CV-10170

JEFFREY WOODS,

Respondent.

HON. BERNARD A. FRIEDMAN

**OPINION AND ORDER (1) GRANTING MOTION TO LIFT THE STAY OF
PROCEEDINGS, (2) AMENDING THE CAPTION, (3) GRANTING THE MOTION TO
AMEND, (4) REQUIRING THAT THE AMENDED PETITION BE SERVED UPON
RESPONDENT, (5) DIRECTING RESPONDENT TO FILE AN ANSWER AND THE
RULE 5 MATERIALS, AND (6) DENYING WITHOUT PREJUDICE PETITIONER'S
MOTION FOR AN EVIDENTIARY HEARING**

Petitioner Demetrius McBride, presently confined at the Kinross Correctional Facility in Kincheloe, Michigan, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, in which he challenged his conviction for unarmed robbery, Mich. Comp. Laws § 750.530. On February 2, 2006, this court issued an opinion and order granting petitioner's motion to hold his habeas petition in abeyance to permit him to return to the state courts to exhaust additional claims that he had failed to raise in the state courts prior to filing his habeas petition. The court also administratively closed the case.

Petitioner has now filed a motion to lift the order holding the habeas corpus petition in abeyance and a motion for leave to amend the petition. Petitioner has also filed a motion for an evidentiary hearing.

Federal courts have the power to order that a habeas petition be reinstated upon timely request by a habeas petitioner. *See Woods v. Gilmore*, 26 F. Supp.2d 1093, 1095 (C.D. Ill. 1998); *Parisi v. Cooper*, 961 F. Supp. 1247, 1249 (N.D. Ill. 1997). Because petitioner alleges that

his claims have been exhausted with the state courts, his petition is now ripe for consideration. Accordingly, the court shall order that the original habeas petition be reopened.

The court shall also order that the caption in this case be amended to reflect that the proper respondent in this case is Jeffery Woods, the warden of Kinross Correctional Facility in Kincheloe, Michigan, where petitioner is currently incarcerated. The only proper respondent in a habeas case is the habeas petitioner's custodian, which in the case of an incarcerated habeas petitioner is the warden. *See Edwards Johns*, 450 F. Supp.2d 755, 757 (E.D. Mich. 2006).

Further, the court shall grant petitioner's motion to amend his habeas petition. The decision to grant or deny a motion to amend a habeas petition is a matter of discretion. *See Clemons v. Delo*, 177 F.3d 680, 686 (8th Cir. 1999). The court shall permit the requested amendment because there is no indication that doing so will cause any delay in the proceedings or prejudice to respondent.

The court shall also order that the Clerk of the Court serve a copy of the amended habeas petition and a copy of this order on respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4. *See Coffee v. Harry*, No. 2005 WL 1861943, at *2 (E.D. Mich. Aug. 2, 2005). Additionally, the court shall order the respondent to file a response to the amended habeas petition, including the Rule 5 materials, within 180 days of the date of this order, as a habeas corpus petitioner is entitled to reasonably prompt disposition of his petition. The court shall give petitioner 45 days from the receipt of respondent's answer to file a reply brief, if he wishes.

Finally, the court shall deny without prejudice the motion for an evidentiary hearing. Until the court receives from respondent an answer and the state court records, it is not possible to

determine whether an evidentiary hearing is needed. Petitioner may renew this motion at that time.

Accordingly,

IT IS ORDERED that petitioner's motion to lift the stay of proceedings is granted.

The Clerk of the Court shall reopen the habeas petition and reinstate it to the court's active docket.

IT IS FURTHER ORDERED that the caption in this matter is amended to reflect that Jeffrey Woods is the proper respondent.

IT IS FURTHER ORDERED that the motion to amend the petition for a writ of habeas corpus is granted.

IT IS FURTHER ORDERED that the Clerk of the Court serve a copy of the amended petition for writ of habeas corpus [docket entry 7] and a copy of this order on respondent and the Attorney General by first class mail or electronically, as appropriate.

IT IS FURTHER ORDERED that respondent shall file an answer and produce the entire state court record within 180 days of the date of this order.

IT IS FURTHER ORDERED that petitioner may file a reply within 45 days after he receives the answer.

IT IS FURTHER ORDERED that the motion for an evidentiary hearing is denied

without prejudice.

S/Bernard A. Friedman _____
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE

Dated: September 15, 2009